

## § 9407.8

actions were taken, including a description of the views expressed on any item and a record reflecting the vote of each Commissioner. All documents considered in connection with any action shall be identified in the minutes.

(c) The transcript, electronic recording, or copy of the minutes of a meeting shall disclose the identity of each speaker.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete electronic recording, or a complete copy of the minutes of the proceedings of each meeting for at least two years, or for one year after the conclusion of any Commission proceeding with respect to which the meeting was held, whichever occurs later.

### § 9407.8 Public availability of records.

The Commission shall make available to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony that relate to matters the Commission has determined to contain information that may be withheld under § 9407.5(a). This information shall be made available as soon as practicable after each meeting on the Commission's Web site. Otherwise, requests to receive or review transcripts, electronic recordings, or minutes of a meeting should be addressed to the Communications Director, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005. Copies of a transcript, a transcription of the electronic recording, or the minutes of a meeting (except for items of discussion or testimony that relate to matters withheld under § 9407.5) shall be furnished at cost to any person upon written request pursuant to the requirements of 11 CFR part 9405.

## PART 9409—TESTIMONY BY COMMISSION EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Sec.

9409.1 Purpose and scope.

9409.2 Applicability.

## 11 CFR Ch. II (1–1–09 Edition)

9409.3 Definitions.

9409.4 Production or disclosure prohibited unless approved by appropriate Commission official.

9409.5 Procedures for demand for testimony or production of documents.

9409.6 Service of subpoenas or requests.

9409.7 Factors to be considered by the General Counsel.

9409.8 Processing demands or requests.

9409.9 Final determination.

9409.10 Restrictions that apply to testimony.

9409.11 Restrictions that apply to released records.

9409.12 Procedure when a decision is not made prior to the time a response is required.

9409.13 Procedures when the General Counsel directs an employee not to testify or provide documents.

9409.14 Fees.

9409.15 Penalties.

AUTHORITY: 44 U.S.C. 3102.

SOURCE: 73 FR 54271, Sept. 18, 2008, unless otherwise noted.

### § 9409.1 Purpose and scope.

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the United States Election Assistance Commission to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The Commission intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving the Commission in controversial issues not related to its functions;

(3) Maintain the Commission's impartiality among private litigants where the Commission is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of the Commission.

(c) In providing for these requirements, the Commission does not waive the sovereign immunity of the United States.

## Election Assistance Commission

## § 9409.3

(d) This part is intended only to provide guidance for the internal operations of the Commission and to inform the public about Commission procedures concerning the service of process and responses to demands or requests. The procedures specified in this part, or the failure of any Commission employee to follow the procedures specified in this part, are not intended to create, do not create, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

### § 9409.2 Applicability.

(a) This part applies to demands and requests to employees for factual or expert testimony relating to official information, or for production of official records or information, in legal proceedings in which the Commission is not a named party. However, it does not apply to:

(1) Demands upon or requests for a Commission employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the Commission;

(2) Demands upon or requests for a former Commission employee to testify as to matters in which the former employee was not directly or materially involved while at the Commission;

(3) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and

(4) Congressional demands and requests for testimony or records.

(b)[Reserved]

### § 9409.3 Definitions.

As used in this part, the term—

*Commission* means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq.*

*Commission employee or employee* means:

(a) Any current or former officer or employee of the Commission;

(b) Any other individual hired through contractual agreement by or on behalf of the Commission or who has performed or is performing services

under an agreement for the Commission; and

(c) Any individual who served or is serving in any consulting or advisory capacity to the Commission, whether formal or informal.

(d) This definition does not include persons who are no longer employed by the Commission and who are retained or hired as expert witnesses or who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the Commission.

*Demand* means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of a Commission employee that is issued in a legal proceeding.

*General Counsel* means the General Counsel of the Commission or a person to whom the General Counsel has delegated authority under this part.

*Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

*Records or official records and information* means:

(a) All documents and materials that are Commission records under the Freedom of Information Act (5 U.S.C. 552);

(b) All other documents and materials contained in files of the Commission; and

(c) All other information or materials acquired by a Commission employee in the performance of his or her official duties or because of his or her official status.

*Request* means any informal request, by whatever method, for the production of records and information or for testimony that has not been ordered by a court or other competent authority.

*Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits,